12-29-2011

Phillips v. Blazier-Henry Appellant's Brief Dckt. 38666

IN THE SUPREME COURT OF THE STATE OF IDAHO

LEON PHILLIPS, an unmarried man, and EARLINE CHANCE, an unmarried woman, Plaintiffs, vs. CAROLE BLAZIER-HENRY, an individual, Defendants.	CASE NO. CV-2009-00085 DOCKET NO. 38666-2011
ROY JACOBSON, Third Party Purchaser/Intervenor/Appellant, vs. LEON PHILLIPS, an unmarried man, and EARLINE CHANCE, an unmarried woman; and CAROL BLAZIER-HENRY, an individual, Third Party Defendants/Respondents.	

APPELLANT'S BRIEF

APPEALED FROM THE DISTRICT COURT OF THE
FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR BONNER COUNTY

HONORABLE STEVE VERBY
District Judge

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

STATUTES

RULES

I. STATEMENT OF THE CASE/PROCEDURAL HISTORY

On March 19, 2009, a Default Judgment was entered against the Defendant, Carol Blazier-Henry, in the amount of $72,667.25 in favor of Plaintiffs, Leon Phillips and Earline Chance.

On April 22, 2009, the recorded Default Judgment and a Writ of Execution in the amount of $87,211.07 were sent to the Bonner County Sheriff's Department, with a request that the real property (described in the Sheriff's Certificate of Sale attached hereto and incorporated herein as Exhibit "A") be levied upon and sold. A Sheriff's sale was set for June 2, 2009, at 10:00 a.m.

On June 2, 2009, the Bonner County Sheriff's Department conducted the sale. Neither Plaintiffs nor Plaintiffs' counsel appeared at the Sheriff's Sale, nor did the Plaintiff submit a written creditor's bid. After a 15 minute delay to allow for late arrival of other bidders, the Sheriff properly called the sale and the real property was sold to the highest bidder, the Appellant, Roy Jacobson, ("Jacobson") for the amount of $1,000.00.

Shortly after the sale, the Sheriff advised Plaintiff's counsel of the sale. Counsel objected claiming that she assumed or expected the Sheriff to announce a credit bid at the sale. The Sheriff responded that a written credit bid must be submitted in advance or submitted in person, or by representative, at the sale.

On November 17, 2009, the Plaintiffs' counsel, together with the Bonner County Prosecuting Attorney's Office, Civil Counsel, Scott Bauer, entered into a Stipulation to Set Aside Sheriff's Sale. The Appellant, Roy Jacobson, purchaser of the real property at Sheriff's Sale, was neither notified nor given an opportunity to be heard prior to the Court's entry of the Order to Set Aside Sheriff's Sale. Mr. Jacobson received the Order in early December, 2009.

The property is less than twenty (20) acres and therefore the period for redemption of the real property lapsed on or about December 2, 2009.

The Appellant, Roy Jacobson, is entitled to a Sheriff's Deed of the real property he legally purchased for the sum of $1,000.00 on June 2, 2009.

On December 30, 2009, the Appellant, Roy Jacobson, filed an Exparte Motion to Quash Order to Set Aside Sheriff's Sale and an Affidavit.

On January 5, 2010, the Court entered an Ex Parte Order Quashing Order to Set Aside Sheriff's Sale.

On January 19, 2010, Arthur M. Bistline substituted as counsel for the Plaintiffs in the place and stead of Plaintiff's Counsel, Fonda L. Jovick.

On April 16, 2010, Jacobson filed a Motion to Issue Sheriff's Deed, Affidavit of Counsel and Affidavit of Roy Jacobson and set the matter for hearing on May 19, 2010.

On April 21, 2010, Plaintiffs through their new counsel, Arthur Bistline, filed a Motion to Set Aside Sheriff Sale or Extend Redemption Period, Memorandum in Support of said Motion, Affidavit of Earline Chance.

On April 30, 2010, the Appellant herein filed his Brief in Response to Plaintiffs' Motion Set Aside Sheriff's Sale.

At hearing on May 19, 2010, the Court ordered on the record that the Sheriffs Sale be set aside and that the Plaintiffs were responsible for attorneys' fees and costs, as well as the Jacobson's principal, interest and lost business opportunities. Plaintiff's counsel prepared an Order, without notice to counsel, and submitted to the Court a proposed Order Re: Motion to set Aside Sheriff's

Sale, which was entered by the Court on May 19, 2010, but which failed to include the language set forth by the Court on the record as set forth above.

On May 27, 2010, counsel for the Appellant herein filed a Motion to Amend Order RE: Motion to Set Aside Sheriff's Sale and to Certify Pursuant to Rule 54(b).

On May 27, 2010, counsel the Appellant herein filed a Motion to Reconsider or to Alter/Amend Judgment/Order, Affidavit of Roy Jacobson, Motion for Attorneys' Fees and Costs, Memorandum of Fees and Costs and notice the matter for hearing on October 6, 2010.

On July 7, 2010, an Order and Judgment were entered in favor of Roy Jacobson, the Third Party Purchaser/Intervenor against the Plaintiffs in the sum of $2,708.61.

At hearing on October 6, 2010, the matter was heard and the Court requested additional briefing be filed by the parties.

On October 6, 2010, the Court entered an Order Re Intervenor to reflect the case heading be modified to include Roy Jacobson as a Third Party Purchaser/Intervenor.

On October 20, 2010, counsel for the Plaintiffs filed their pleading entitled "Additional Briefing" and an Affidavit of Arthur M. Bistline. On November 3, 2010, counsel for the Jacobson filed his Reply Brief.

On January 18, 2011, the Court entered its Memorandum Decision denying Mr. Jacobson's Motion to Reconsider Order setting aside Sheriff's Sale and granting Mr. Jacobson's Motion to Amend the Order to reflect that Mr. Jacobson is entitled to all of the money he paid towards purchase of the property, taxes, etc., as well as attorneys' fees and costs, plus any lost profit or business opportunities, and accrued interest.

On February 9, 2011 a Final Judgment and Rule 54(b) Certificate was entered with the above findings. On March 16, 2011, the undersigned timely filed his Notice of Appeal. The issue raised in the Notice of Appeal is the propriety of the Trial Court's decision to set aside the Sheriff's sale based solely on a finding that Mr. Jacobson's purchase at the sale of $1000.00 is so inadequate as to "shock the conscience" of the Court.

On April 6, 2011, the Plaintiffs filed their Notice of Cross-Appeal. The Plaintiffs' Cross-Appeal apparently argues that the Court erred by not finding "other circumstances" or irregularities supporting the decision to set aside the sheriff's sale.

II. ISSUES PRESENTED ON APPEAL

A. The Trial Court Erred by Adopting a "Shock the Conscience" Standard where Idaho Case law has not adopted such standard.

B. The Trial Court Erred in its Finding that the Third Party Purchaser Jacobson's Bid Price of $1,000.00 was so Grossly Inadequate as to Shock the Court's Conscience in Relationship to the "Fair Market Value" of $99,000.00.

C. The Trial Court Erred in Granting Plaintiffs' Equitable Relief When Plaintiffs had Adequate Remedies at Law.

D. Policy Considerations Require the Court Reverse the Trial Court's Memorandum Decision.

E. Jacobson is Entitled to Attorneys' Fees and Costs on Appeal.

III. ARGUMENT

A. The Trial Court Erred by Adopting a "Shock the Conscience" Standard where Idaho Case law has not adopted such standard.

Over the past century, the Idaho Courts have consistently held that the equitable relief of setting aside a sheriff's sale is only available when the sale was for inadequate consideration and other circumstances exist that justify setting aside the sale. The degree to which the consideration is lacking may reduce the need for a showing of other circumstances to that of "slight" circumstance, but a showing must still be made.

For example, the case law is clear that where the sheriff fails to comply with the correct procedure, the District Court is correct in setting aside the sale. Fulton v. Duro, 107 Idaho 240, 687 P.2d 1367 (App.1984). The U.S. Supreme Court has held that failure to provide "actual notice of the sale" constitutes an unconstitutional deprivation of property without due process of law and supports setting aside of Sheriff's Sale. Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed. 2d, 180 (1983); quoted in Tudor Engineering v. Mouw, 109 Idaho 573, 709 P.2d 146 (1985).

Further, the Court may act in equity where there exists between the parties fraud, mistake or other circumstances appealing to the Court's equitable jurisdiction, to deprive a purchaser or party *with unclean hands* from benefitting from his wrongful conduct. Steinour v. Oakley State Bank, 45 Idaho 472, 262 P. 1052 (1928) [where bank/creditor representative promised debtor that bank would extend time for redemption].

Finally, the Court has recognized "other circumstances" where the defendant/debtor was determined legally incompetent from prior to filing of the debt collection action through the time of sheriff's sale. Southern Idaho Production Credit v. Ruiz, 105 Idaho 140, 666 P.2d 1151 (1983).

On the other hand, the Idaho case law does not support setting aside the sale where the purchaser comes to the Court with clean hands and none of the "other circumstances" illustrated above exist. Counsel is unaware of any case in Idaho allowing the setting aside of a sale based upon the mere mistake or oversight of the moving party.

In the Trial Court's Memorandum Decision on Jacobson's Motion to Intervene, the Court made two (2) significant findings: First, the Court found that the record did not reveal even "very slight circumstances" to accompany a finding of gross inadequacy of price and therefore fulfill the requirements of the Idaho Supreme Court Decision in Gaskill v. Neal. Second, the Court found that the disparity between the Noonan Appraisal of the real property and Jacobson's $1,000.00 sale bid was so "grossly inadequate so as to shock" the court's judicial conscience justifying the decision to set aside the Sheriff's sale. (R.p.170)

The Trial Court's Decision relied entirely upon the case of Fiolle v. First National Bank of Thomas, 173 Okla. 501, 49 P.2d 145 (Okla.1935). The Court determined that this was a matter of first impression, but because the Idaho Supreme Court had relied upon Fiolle in its ruling in Gaskill v. Neal, 77 Idaho 428, 293 P.2d 957 (1956), it was appropriate for the Trial Court in this matter to further extend Fiolle and adopta standard that a Sheriff's sale may be set aside where the sale price "shocks the conscience" of the court even where no other circumstances exist to justify setting it aside. This "standard" is never defined by the Trial Court, except to use the analogy of granting a new trial notwithstanding a jury verdict.

The Court declined to grant Jacobson's Motion to Reconsider and found that the Jacobson purchase price of $1,000.00 so grossly inadequate in comparison to the Noonan Appraisal of $99,000.00, as to shock the Court's conscience justifying the setting aside of the Sheriff's Sale. This ruling is in error for the reasons that follow.

The Fiolle decision is quoted as follows:

> On a motion to confirm a sale, the court should carefully examine the officer's proceedings and, if in conformity to the statutes in such cases made and provided and there are no other conditions, should confirm the sale. *Mere inadequacy of price bid is not of itself a sufficient cause of setting aside a sale in the absence of fraud or irregularity or other causes appealing to the equitable jurisdiction of the court, but all of the authorities hold uniformly that gross inadequacy of consideration, coupled with very slight additional circumstances, is sufficient to set aside such sale, and that where the consideration is so grossly inadequate as to shock the conscience of the court, it is alone sufficient.*
>
> Fiolle v. First National Bank, 173 Okla. 501, 49 P.2d 145, 146 (Okla.1935)[italics added]

The Trial Court erred to consider two (2) factors in adopting the latter portion of Fiolle decision quoted above.

First, the Fiolle Court's decision not to confirm the sale is distinguished from this case as the decision was justified by other circumstances. The opinion reflects that the Fiolle sale was called at 2:00 p.m. whereupon the third-party purchaser issued a bid of $26.00. Approximately, two (2) minutes or twenty (20) minutes later (the evidence was in conflict), the creditor/bank's legal counsel appeared, explained his delay was caused by traffic detour, and offered a bid of $500.00 on behalf of the bank. The Sheriff's Deputy conducting the sale refused the credit bid, even though offered just minutes after the 2:00 p.m. sale time. The evidence also reflected that the Sheriff's

Deputy conducting the sale (Miller) was not knowledgeable as to the ordinary custom and practice of the Sheriff conducting these sales and believed it to be his legal obligation to accept only the third-party purchaser's bid offered at the time the sale was called. The Fiolle Trial Court refused to confirm the third-party purchaser's bid.

In ruling to affirm the Trial Court, the Oklahoma Supreme Court stated that a party may set aside a sale whenever the property is not sold for fair price and there has been "some other misconduct, or irregularity, injurious to the sale; or (4) the purchaser has been guilty of some misconduct tending to diminish the price, or discourage bidding; or (5) others have been guilty of combinations, or other acts injuriously affecting the sale; or (6) the weather was so exceeding inclimate or the water so high *or in some other way bidders were prevented or deterred from attending* the sale; or (7) for some other reason *not the fault of the party complaining* a fair sale was not had." Fiolle, 49 P.2d at 146. [italics added]

It was noted by the Fiolle court that counsel for the creditor's bid was delayed in arriving at the sale to offer his bid due to "a bad detour in route to the place of sale". Fiolle, 49 P.2d at 145.

In the instant case, the Record is undisputed that the Bonner County Sheriff delayed calling of the sale for more than fifteen (15) minutes and did so with the consent and agreement of Mr. Jacobson, the third-party purchaser. (Clerk's Certificate of Exhibit No. 3; Affidavit of Roy Jacobson dated December 30, 2009). Plaintiffs never appeared at the sale and by their prior Counsel's affidavits did not believe they were required to appear at the sale or submit a bid.

Second, the Trial Court in this matter erred in its adoption and application of the language of the "shocking the conscience" standard from Fiolle as that standard does not appear to be the law in Idaho, and may not be good law in the state of Oklahoma.

Idaho law on this subject is clear that other circumstances must exist in addition to an inadequate sale price. In Oklahoma case law, the Fiolle case was decided upon inadequate sale price and other circumstances discussed above. Although the Court included language regarding the "shocking the conscience" standard, it appears to never have been applied.

Two (2) years after Fiolle, the Trial Court in Sharp v. Elsea, 180 Okla. 201, 69 P.2d 55 (Okla.1937) refused to confirm a sale finding that although no irregularities in the sale existed, the sale price of $1,200.00 for 80 acres was grossly inadequate and shocked the Trial Court's conscience. On appeal, the Oklahoma Supreme Court found for the plaintiff and reversed the Trial Court and remanded with the directions to confirm the sale, despite the defendant's argument that the Fiolle decision supported the trial court's Order Refusing to Confirm the Sale.

The Oklahoma Supreme Court in Sharp v. Elsea, stated as follows:

> Gross inadequacy is quite generally, if not always, accompanied by some circumstance, however slight, to warrant a refusal of confirmation, but in the case at bar, there is no slight circumstance. On the other hand, the court found that *there was no irregularity and that the sole and only respect in which the same was unfair was in the inadequacy of the price bid at said sale. No case has been called to our attention, nor has one been examined by us, in which the parties were present at the sale, or had an opportunity to be present, in which the Appellate Court sustained the action of the trial court where it refused to confirm the sale solely on the grounds of inadequacy of the bid.....*
>
> Sharp v. Elsea, 180 Okla. 201, _____
> 69 P.2d 55, 56 (Okla.1937)[italics added]

The takeaway from the Sharp decision two (2) years subsequent to Fiolle is that the Oklahoma Supreme Court cannot imagine a circumstance in which it would set aside a sale simply because of inadequate price, where no other circumstances exists.

Further on, the Sharp Court stated: "We do not announce the rule that there cannot arise a case where gross inadequacy standing alone will not warrant a refusal to confirm. We believe the rule in State v. Harrower, supra and the above authority sufficient to cover every contingency in that respect that might arise." Id. In short, the prior line of Oklahoma decisions (similar to Idaho's) always shows some other circumstance supporting a decision to set aside the sale.

Further, the Oklahoma Supreme Court notes that the various circumstances, misconduct, irregularity, weather or natural events interfering with bidding, etc., are sufficient to cover every contingency that might arise justifying setting aside of the sale. The Oklahoma Supreme Court further noted that gross inadequacy is generally, if not always, accompanied by one (1) of these other circumstances justifying a decision to set aside the sale.

In this case, the Trial Court found no other circumstances, not even "very slight" circumstances, exist to justify setting aside the sale. Idaho law is unequivocal and does not follow the "inadequate consideration alone" standard. If that were true, then every sheriff's sale would be vulnerable to attack requiring the Court to weigh the various valuations and equities of the circumstances. This "shock the conscience" standard fashioned by the Trial Court will insert a high degree of uncertainty into sheriff's sales.

The Trial Court crafted a new rule of law in Idaho, from what appears, in light of subsequent Oklahoma cases, to be hypothetical dicta in Fiolle. Of note, no decision from any court was cited by the Trial Court wherein the "shocking the conscience" standard alone justified setting aside a sheriff's sale.

Additionally, the new "standard" announced by the trial Court in this matter, is without definition sufficient to allow consistent application. When does a bid "shock" the conscience sufficiently to undo the permanency of a sheriff's sale?

The Trial Court committed error in adopting this standard, and this Court is asked to reverse and remand with instructions to deny Plaintiff's Motion to Set Aside and to confirm Roy Jacobson's purchase of the real property.

B. The Trial Court Erred in Finding that Jacobson's Sheriff Sale Bid of $1,000.00 was so Grossly Inadequate as to Shock the Court's Conscience in Relationship to the "Fair Market Value" of $99,000.00.

For the reasons set forth below, the Trial Court misapplied the Noonan appraisal of $99,000.00 as a "fair market value" under the circumstances of a Sheriff's Sale. Mr. Noonan's appraisal opines that the property in question had a value of $99,000.00 on the date of sale, June 2, 2009, and defines "fair market value" as:

> The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised and each acting in what he considers his own best interests; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. Dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
>
> Affidavit of David Noonan,
> attached Appraisal p. 10

Pursuant to case law, this is not the definition of fair value to be achieved at a Sheriff's Sale.

> A fair sheriff's sale price would be a price within a range of prices a neutral person would be willing to pay, at a forced sale, for property conveyed, not by warranty deed, but rather by a sheriff's deed, subject to known and unknown encumbrances, assessments and potential liens with an uncertain quality or condition of any existing structures; with potential latent problems and unknown liability; considering the amount a person would need to invest in necessary repairs or cleanup; with risk of legal process and expense to secure possession or clear title; and with uncertainty of potential concealed environmental hazards. In short, the price at a fair sheriff's sale

> would be a price in the range a neutral outsider under no constraint to buy would reasonably be willing to risk paying at a forced sale conducted by open bidding. Property sold at a sheriff's sale will not normally sell for a price approaching its fair market value. Always to be considered is the underlying need for judicial sales to be final.
>
> Sisk v. McIlroy & Associates, 934 S.W. 2d 567, 570-1 (Mo. App., Div. 1, 1996); quoting, Yakley v. Wian, 877 S.W.2d 179, 182, 183 (Mo. App.W.D. 1994)

It was, therefore, error for the Trial Court to simply compare the Noonan fair market value of $99,000.00 as against Mr. Jacobson's Sheriff's bid of $1,000.00. Mr. Jacobson attested that the property's condition was poor and that he purchased the property at the Sheriff's Sale realizing that it was occupied with a tenant or squatter and would require extensive expenditures to clean up and remove the squatter and squatter's shack and other debris on the property so as to make it susceptible to improvement and use. (See Affidavit of Roy Jacobson dated May 27, 2010; Clerk's Certificate of Exhibits No. 12)

This Court should reverse the Trial Court's finding that Mr. Jacobson's purchase of the property for $1,000.00 was so grossly inadequate as to shock the court's conscience when compared to the Noonan appraised value of $99,000.00 as fair market value is defined by Noonan. Such a finding is not supported by the evidence or case law. This Court is asked to reverse the Trial Court and remand with instructions directing the Trial Court to enter Judgment in favor of Appellant, Jacobson.

C. The Trial Court Erred in Granting Plaintiffs' Equitable Relief When Plaintiffs had Adequate Remedies at Law and Plaintiff has Unclean Hands.

The relief sought by Plaintiffs, and granted by the Court, of setting aside the Sheriff's Sale, is an equitable remedy. See: Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008); Steinour v. Oakley State Bank, 45 Idaho 472, 262 P. 1052 (1928); Gaskill v. Neal, 77 Idaho 428, 293 P.2d 957 (1956); Wooddy v. Jameson, 5 Idaho 466, 50 P. 1008 (1897).

"Equitable claims will not be considered when an adequate legal remedy is available." Iron Eagle Development, LLC v. Quality Design Systems, Inc. , 138 Idaho 487, 492, 65 P.3d 509, 514 (2002).

Where a remedy that is adequate, certain and complete exists at law, the courts have consistently held that no equitable remedy will lie. County of Ada v. Bullenbridge Company, 5 Idaho 79 (1896); Beem v. Davis, 31 Idaho 730, 175 P. 959 (1918); Silver Bull, Inc. v. Equity Metals, Inc., 93 Idaho 487, 464 P.2d 926 (1970).

This issue was briefed and argued to the Trial Court on Jacobson's Motion to Reconsider. The Trial Court, in its Memorandum Decision, made no findings as to why it chose to disregard Plaintiffs' obvious remedies at law and instead favored the Plaintiffs with the equitable remedy of setting aside the Default Judgment.

In a strikingly similar case, the Wyoming Supreme Court reversed a trial court's order setting aside a sheriff's sale where the plaintiff creditor's legal counsel forgot or failed to communicate and cancel the sheriff's sale on the appointed day.

As the Wyoming Supreme Court noted, "As an initial matter, one of the basic tenants of equity is that equitable remedies depend upon a showing by the claimant of clean hands". McNeil Family Trust v. Centura Bank, 60 P.3d 1277, 1284 (Wyoming 2003).

The Wyoming Court in Centura noted that the original mistake was caused by Centura and the litigation that ensued was a result of the creditor's mistake. In so finding, the Court noted that Centura did not come to the court with clean hands in its request of equitable relief in the form of setting aside the sheriff's sale.

Further, the Wyoming Court noted that equitable relief could not be invoked by the creditor since adequate remedies at law existed in favor of the creditor, Centura Bank. The Wyoming Court noted that it was "obvious" that Centura Bank could have purchased the sheriff's certificate or certificate of purchase from the McNeil Trust or acquired the right of redemption and thereafter sought a recoupment of any losses it might have incurred through action against its legal counsel. McNeil, 60 P.3d at 1285.

In the instant case, the facts are nearly identical. Plaintiff Chance instigated the current circumstance by setting the matter for Sheriff's Sale on June 2, 2009, and then failing to appear or lodge with the Sheriff a creditor's bid. Rather than immediately taking action to set aside the Sheriff's Sale to Mr. Jacobson, Plaintiffs' counsel instead called Mr. Jacobson threatening that they would not allow the Sheriff's Sale to stand at $1,000.00. From that point, nearly six (6) months passed before Plaintiffs' counsel secured a "Stipulation" to Set Aside the Sheriff's Sale signed only by Plaintiffs' counsel and counsel for Bonner County, Scott Bauer. No notice of hearing or stipulation was sought from Mr. Jacobson, the third-party purchaser at the sale on June 2nd.

The "Stipulation" was then submitted to the Court in late November, together with an Order, and Mr. Jacobson received the Court's Order in early December, six (6) months after he purchased the subject property at the Sheriff's Sale on June 2nd.[1]

> The proper remedy to set aside a judicial sale, which has been wrongfully made, prior to the execution of the sheriff's deed, is by motion in the principle action. Notice of the motion should be served upon the adverse party **or upon the purchaser**.
>
> Wooddy v. Jamison, 5 Idaho 466, 50 P.1008 (1897)

Mr. Jacobson promptly acted in response to the improperly obtained Stipulation to Set Aside Sheriff's Sale. Three (3) months then passed with, again, no action being taken by Plaintiffs. Being unsuccessful in securing a deed from the Sheriff, Mr. Jacobson, through counsel, filed a Motion to Issue Sheriff's Deed on April 16, 2010, noticing the matter for hearing. (R. pp.108-110) Not until April 21, 2010, and apparently in response to Jacobson's Motion to Issue Sheriff's Deed, did the Plaintiffs finally file their Motion to Set Aside Sheriff's Sale, which was granted by the Court on May 19, 2010, and modified by the Court on Jacobson's Motion to Reconsider by the Court's Memorandum Decision issued January 14, 2011. (R.p.121; pp.164-174)

Although the standard for relief is clear in Idaho case law, the Plaintiff's improperly gotten "Stipulation" fails to even meet the standard. In Federal Land Bank of Spokane v. Curts, the Idaho Supreme Court noted as follows:

> As a general rule, mere inadequacy of consideration is not sufficient grounds for setting aside a sheriff's sale, but it is uniformly held

[1] The property is less than twenty (20) acres and, therefore, the right of redemption is six (6) months pursuant to Idaho Code § 11-402.

> that gross inadequacy of consideration coupled with very slight additional circumstances, is sufficient.
>
> Federal Land Bank of Spokane v. Curts,
> 45 Idaho 414, _____ 262, P.877, 880-881 (1927)

Plaintiffs' Stipulation to Set Aside Sheriff's Sale presented no unusual circumstances to justify the relief and was submitted at, or very near, the six (6) month redemption deadline. The Plaintiffs' Stipulation alleges "for factual reasons that will remain undisclosed, the Bonner County Sheriff's Department and the Plaintiffs hereby stipulate to set aside said sale", but ignores the purchaser, Roy Jacobson, altogether.

The Plaintiffs then failed to timely bring their Motions to Set Aside the Sheriff's Sale and, instead, waited until after the period for redemption had lapsed and after Jacobson sought relief from the Court directing the issuance of a Sheriff's deed pursuant to the Sale ten (10) months prior.

Where a party is moving to set aside a sheriff's sale in equity, but provides no grounds for their delay, the Idaho Supreme Court has held that granting such equitable relief "would do violence to the general rule of equity that a party will not be permitted to benefit by or take advantage of his own fault or neglect". Equitable Life v. Clapier, 121 Idaho 200, 203, 824 P.2d 131, 134 (App.1991); quoting Thiel v. Stradley, 118 Idaho 86, 88, 794 P.2d 1142, 1144 (1990).

The Trial Court seems to have lost sight of the Gaskill court's finding that a motion or application to set aside a sheriff's sale must be made "promptly and without unreasonable delay", a finding which has been upheld in Equitable Life Insurance v. Clapier, 121 Idaho 200, 824 P.2d 131 (App.1991) [finding that the motion filed eighteen (18) months after the date of foreclosure sale,

and well after the one (1) year redemption period had expired, was untimely]. In this case, the Plaintiffs were untimely in their Motions for relief from the Sheriff's Sale.

The Trial Court in its Memorandum Decision makes note that it is obligated to protect the equitable rights of both the Plaintiff Creditor and the Defendant Debtor, Carol Blazier-Henry. However, the Court fails to address why neither the Creditors nor Debtor failed to timely exercise their right of redemption under Idaho Code § 11-402. The Record reflects that Plaintiff Creditors' counsel, Arthur Bistline, did subsequently secure an Assignment from the Defendant Debtor of her redemption rights, something that could easily have been accomplished at any time between June 2nd and late November. Thereafter, the Plaintiff Creditors could have exercised the assigned redemption rights by merely paying the sum of $1,000.00 together with interest, fees or costs incurred by Mr. Jacobson. The Plaintiffs and Defendant did not do so and, therefore, they appear before this Court without clean hands in their quest for equitable relief.

For the reasons set forth herein, this Court should reverse and remand the Trial Court's ruling setting aside the Sheriff's Sale. On remand, this Court is asked to direct the Trial Court to issue a Sheriff's Deed in favor of the third-party purchaser, Roy Jacobson.

D. Policy Considerations Require the Court Reverse the Trial Court's Memorandum Decision

The Idaho Supreme Court, since Gaskill v. Neal, rejected a claim that a sheriff's sale is void where notice of the sale was improperly given and the court reversed the lower court reinstating the sheriff's sale to the third party purchaser quoting the California Supreme Court as follows:

> Very few of those who become purchasers of land at sheriff's sales, have an opportunity of knowing whether or not the law, with respect to notice, has been strictly complied with, or whether the defendants in execution have personal property at the time of the levy, and if every mistake or neglect of duty, on the part of a sheriff, would operate to invalidate such sale, great injury would result, both to debtor and creditor, for no prudent man would give a fair price for property, if he was liable to be divested of his title by reason of the laches of the officer.
>
> Nixon v. Triber, 100 Idaho 198, 200, 595 P.2d 1093, 1095 (1979); quoting Smith v. Randall, 6 Cal. 47, 65 Am.Dec. 475 (1855)

While other factors were under consideration in the Nixon case, the court's policy warning is sound advice. The effect of undoing a sheriff's sale will, ultimately, have a chilling affect upon bidders like Mr. Jacobson who are willing to accept the many risks of purchasing at Sheriff's sales. It is these bidders that ensure a fair and equitable sale process, that should be considered when determining whether a to unsettle the process by setting aside a sheriff's sale. If the courts accept the "shocking the conscience" standard adopted by the Trial Court, the Court not only punishes the third party purchaser in the instant sale, but has a chilling effect upon third party purchasers in subsequent sheriff's sales.

Policy considerations of stability and certainty in the finality of the sheriff sale process dictate that the Court reverse the Trial Court's ruling and remand with instructions directing that the Court issue judgment in favor of Mr. Jacobson.

E. Jacobson Is Entitled To Attorneys' Fees And Costs On Appeal.

Idaho Code § 12-121 permits the award of fees and costs to a prevailing party on appeal where the action is brought or pursued frivolously, unreasonably or without foundation. Idaho Code § 12-121 (2010).

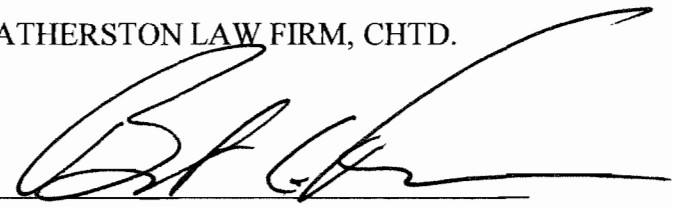
To the extent permitted by the Idaho Appellate Rules and, specifically, Rules 40 and 41, Appellant Jacobson requests an award of attorneys' fees and costs.

IV. CONCLUSION

For the reasons set forth in the Record and as set forth herein, this Court is respectfully requested to reverse the Trial Court's findings set forth in the Memorandum Decision and to remand this matter with instructions to the Trial Court to enter Judgment in favor of Appellant, Roy Jacobson, specifically issuing a Deed to Mr. Jacobson as purchaser at the Sheriff's Sale on June 2, 2009.

RESPECTFULLY SUBMITTED this 27th day of December, 2011.

FEATHERSTON LAW FIRM, CHTD.

By 

BRENT C. FEATHERSTON
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was delivered this 27th day of December, 2011, to the following people in the manner indicated:

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